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HUMAN RIGHTS DUE DILIGENCE IN TRANSPORT

Guidance on CSRD and CS3D



2024

HUMAN RIGHTS DUE DILIGENCE IN TRANSPORT

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INTRODUCTION

What is human rights due diligence?

Human rights due diligence (HRDD) is usually defined as the process that companies use to ensure their operations and business relationships do not harm people or the planet. It involves identifying, assessing and addressing potential and actual human rights risks, caused by a company's activities, supply chains and partnerships^[1] Companies have to consider the risks and impacts that the business has on people's rights, instead of only considering the financial risks and impacts for the business.

The concept emerged from the recognition that companies have a responsibility to respect human rights, not just within their direct operations but also across their value chains. With the adoption of the United Nations Guiding Principles on Business and Human Rights (UNGPs), this responsibility was enshrined in an international framework in 2011.^[2]

The UNGPs established three pillars:

- **The state duty to protect human rights:** Governments are responsible for safeguarding human rights through laws, policies and enforcement.
- **The corporate responsibility to respect human rights:** Companies must avoid infringing on human rights and address harms they cause or contribute to.
- **Access to remedy:** Victims of business-related human rights abuses must have access to justice and remediation.

These principles have since become the global standard for responsible business conduct and have been endorsed by organizations like the OECD and the International Labour Organization (ILO).^[3]

In similar vein, the European Union has adopted a growth strategy to make Europe the first climate-neutral continent by 2050.^[4] This set of policy initiatives was designed as a compass to make the EU's economy sustainable and fair, balancing environmental protection with social justice. Hence, the strategy is based on a clean and circular economy, and it puts people at the core of transition.

Human rights due diligence is essential to the European Green Deal, as it ensures that companies do not exploit workers or harm communities while transitioning to greener practices. Furthermore, it ties human rights to sustainability, acknowledging that environmental harm often impacts vulnerable groups the most. The European Union has also set minimum safeguards for investments to ensure that businesses who claim to be sustainable respect human rights.

[1] European Coalition for Corporate Justice. (n.d.). Human rights and environmental due diligence. <https://corporatejustice.org/priorities/#:~:text=Human%20rights%20and%20environmental%20due%20diligence%20is%20generally%20understood%20as,subsidiaries%2C%20subcontractors%2C%20and%20suppliers>.

[2] UN OHCHR. (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. United Nations.

[3] OECD. (2023). *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*. OECD Publishing; ILO. (2022). *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*.

[4] European Commission. (n.d.). *The European Green Deal. Striving to be the first climate-neutral continent*. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

The present report will focus on two instruments that have been adopted within the framework of the European Green Deal. The 2022 Corporate Sustainability Reporting Directive (CSRD)^[5] established a duty for certain companies to report on their sustainability efforts. Later, the Corporate Sustainability Due Diligence Directive (CS3D)^[6] went one step further, introducing mandatory human rights due diligence.

Why is human rights due diligence important?

Transport plays a key role in connecting people, goods and services globally. It is a lifeline for modern economies. Because of its worldwide scope, however, the sector faces important challenges. The importance of human rights due diligence in transport can therefore hardly be underestimated.

a. For the planet

The transport sector contributes to climate change, pollution and resource depletion. It causes profound negative impacts on the environment and human health, being responsible for about 25% of the EU's total greenhouse gas (GHG) emissions.^[7] In 2021, the transport sector had the greatest reliance on fossil fuels from all end-use sectors, accounting for 37% of total carbon dioxide (CO₂) emissions.^[8]

Human rights due diligence is of particular importance in the transport sector, because its activities are deeply intertwined with environmental health and human rights. The process may help to address some of the most important challenges facing the sector today:

- Reducing carbon emissions and combatting climate change;
- Addressing pollution and protecting ecosystems;
- Ensuring responsible use of natural resources;
- Protecting vulnerable communities from environmental harm;
- Aligning with global sustainability goals;
- Building Resilience Against Environmental Risks.

b. For the people and workers

Transport touches the lives of millions of people daily, from workers delivering all kinds of goods, to airline passengers or even communities living near transport hubs or infrastructure. Because so many people are involved, the sector also comes with risks of human rights abuses, such as unsafe working conditions, exploitation and the displacement of communities.

Human rights due diligence is essential to address these challenges, ensuring that transport

[5] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

[6] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

[7] European Environment Agency. (2024). *Transport and mobility*. <https://www.eea.europa.eu/en/topics/in-depth/transport-and-mobility?activeTab=07e50b68-8bf2-4641-ba6b-eda1afd544be>.

[8] United Nations Environment Programme. (2024). *Climate Risks in the Transportation Sector*. United Nations.

companies respect the rights and dignity of people throughout their operations and supply chains. It may particularly help in:

- Ensuring fair and safe working conditions;
- Addressing exploitation in supply chains;
- Protecting the rights of vulnerable workers and fostering inclusivity;
- Respecting the rights of communities affected by transport activities;
- Enhancing a culture of fairness and accountability at the workplace;
- Building social dialogue into the decisions needed to address workers' rights and climate change and achieve a just transition.

c. For companies

Reputational risks have become very important, because controversies can influence the rating agencies and the behaviour of a company's business partners and shareholders. Controversies affecting companies and their business partners are often widely publicised and analysed by different types of stakeholders. However, several recent legislative changes have harmonised company obligations, including transparency, to ensure that sustainable development reports do not consist of simple marketing tools for competition purposes.

HRDD focuses on remediation, but above all on preventing the risks of human rights and environmental violations. Human rights due diligence is a process designed to identify potential human rights risks and liabilities that could impact a business's financial performance. When effectively implemented, it helps to prevent and mitigate these risks, ensure legal compliance, and support informed decision-making by offering a comprehensive understanding of the social, environmental and governance issues. Company management also carry out due diligence to anticipate negative impacts on the company itself, including from a financial perspective because financial and non-financial issues are often linked.



**HUMAN
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IN THEORY**

HUMAN RIGHTS DUE DILIGENCE IN THEORY

1. The Corporate Sustainability Reporting Directive (CSRD)

a. Aim

On 14 December 2022, the European Parliament and the Council adopted the so-called Corporate Sustainability Reporting Directive (CSRD)^[9].

The CSRD seeks to modernize and strengthen the **obligation for companies to report on social, environmental and governance (ESG) information**. Addressing the limitations of the 2014 Non-Financial Reporting Directive (NFRD)^[10], the CSRD introduces a more comprehensive framework for ESG reporting. Companies must now disclose their social and environmental impacts in accordance with a set of unified sustainability standards. Stringent auditing and assurance procedures must guarantee compliance with the reporting requirements. Moreover, the CSRD significantly extends the scope of the companies previously concerned by the NFRD.



[9] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

[10] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

b. Scope of application

The CSRD applies to a broad range of companies. It is expected that over 50.000 companies will ultimately fall under the scope of the new Directive. This is a significant increase compared to the 11.000 companies covered by the NFRD.^[11]

Essentially, **four categories of companies must comply with the reporting requirements.**

Category	Criteria
Large EU public interest entities (including credit institutions and insurance companies) = companies covered by the NFRD	Companies that... 1) are defined as 'public interest entities' under Article 2(1) of the Accounting Directive; 2) have more than 500 employees.
Large EU undertakings and EU parent undertakings of large groups (other than those part of the category above)	Companies that meet at least two of the following criteria (either as a single entity or on a consolidated group basis): 1) have a balance sheet total exceeding 25.000.000 euros; 2) have a net turnover exceeding 50.000.000 euros; 3) have an average of more than 250 employees during the financial year.
Listed EU small and medium enterprises (SMEs)	Companies that... 1) are not micro-undertakings; 2) have securities listed on a regulated EU market; 3) meet at least two of the following criteria: i. have a balance sheet total exceeding 5.000.000 euros; ii. have a net turnover exceeding 10.000.000 euros; iii. have an average of more than 50 employees during the financial year.
Non-EU parent companies either with an EU-established large subsidiary or a listed SME subsidiary, or with a large EU branch	Companies that... 1) have a net turnover exceeding 150.000.000 euros; 2) have at least one subsidiary in the EU that falls under one of the categories above or have at least one branch in the EU with a net turnover exceeding 40.000.000 euro.

Only companies falling under one of the categories above are obliged to comply with the requirements of the CSRD. Nevertheless, the Directive's impact on companies outside of its scope may not be underestimated. Transport companies, by their very nature, are nearly always part of a value chain. Hence, even when they do not directly need to report on ESG information themselves, they may expect questions from their suppliers or customers that do fall under the Directive's scope.

c. Implementation

The obligations arising from the CSRD are not entering into force all at once. A gradual implementation is foreseen over the course of the next few years.

[11] European Commission. (2021). *Questions and Answers: Corporate Sustainability Reporting Directive proposal*. https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_1806.

Category	Implementation date
Large EU public interest entities (including credit institutions and insurance companies) = companies covered by the NFRD	Reporting due from 2025 for financial years starting on or after 1 January 2024.
Large EU undertakings and EU parent undertakings of large groups (other than those part of the category above)	Reporting due from 2026 for financial years starting on or after 1 January 2025.
Listed EU small and medium enterprises (SMEs)	Reporting due from 2027 for financial years starting on or after 1 January 2026. For financial years starting before 1 January 2028, in-scope SMEs have the possibility of opting out from the sustainability reporting requirements, if they briefly state in their management report why the sustainability information has not been provided.
Non-EU parent companies either with an EU-established large subsidiary or a listed SME subsidiary, or with a large EU branch	Reporting due from 2029 for financial years starting on or after 1 January 2028.

The EU Member States were given 18 months to implement the CSRD provisions into their national legislation. On 6 July 2024, the transposition deadline expired. A total of seventeen Member States have failed to implement the CSRD in a timely manner. Hence, the European Commission decided to open infringement procedures by sending a letter of formal notice to the concerned Member States.^[12]

d. Obligations

The CSRD establishes a unified framework for reporting on ESG information. It notably introduces a **standardized, comparable and consistent reporting format**, as to ensure transparency for all stakeholders. Companies are thus not free to choose which information to disclose and how to do so. Instead, they must follow the guidelines set out in the CSRD.

Where the Directive itself provides little guidance regarding the content and structure of the sustainability report, more specific reporting requirements have been adopted by the European Commission. As such, the **European Sustainability Reporting Standards (ESRS)** serve as the foundation for CSRD compliance, providing a structured approach for companies to communicate their sustainability performance.^[13]

One of the key principles of the ESRS is that of **double materiality**. This entails that companies should not only report on their own impact on people and the environment (**impact materiality** – inside-out perspective), but also on how their business is affected by sustainability matters (**financial materiality** – outside-in perspective). In other words, the starting point for sustainability reporting under the ESRS is a so-called materiality assessment, considering the **impacts of** as well as the

[12] European Commission. (2024). *Commission takes action to ensure complete and timely transposition of EU Directives*. https://ec.europa.eu/commission/presscorner/detail/en/inf_24_4661.

[13] Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards.

risks to and opportunities for both the company and its business partners. This assessment helps to identify which topics are most relevant (“material”) to the company and its stakeholders and determines which information the company must disclose publicly.

At the core of the ESRS framework are two **cross-cutting standards**, which means that they are mandatory and universally applicable. These standards can be seen as the foundational requirements for CSRD compliance. They serve as a compass, giving companies guidance throughout the reporting process.

ESRS 1, entitled “**General requirements**,” contains the essential principles, key concepts and editorial conventions for sustainability reporting. It outlines the overall architecture of the ESRS. This first standard delves into the double materiality principle, delineates the scope of the value chain and discusses the role of due diligence in reporting.

ESRS 2, entitled “**General disclosures**,” specifies the information that all companies must disclose in their sustainability report, regardless of any materiality assessment. This mandatory information includes business characteristics, a statement on how sustainability is integrated into the corporate governance framework, and a clarification of the role sustainability plays in the company’s long-term planning and decision-making processes. They also need to consider the impacts of their transition plans on their own workforce, workers in the value chain, and communities.

In addition to the mandatory cross-cutting standards, the ESRS framework offers ten non-mandatory **topical standards**, subdivided into three main categories. These standards provide a more detailed lens through which companies can evaluate their sustainability performance. They delve into specific ESG topics, that only require detailed reporting if they are deemed relevant to the company (i.e. when they are identified as material). Sustainability matters that are not covered by one of the topical ESRS, yet are considered as material to the company, can be addressed in the report as well. In any case, companies must always justify why certain topics are (not) material. Trade unions, along with other stakeholders, should be part of the discussion in determining which topics are material to the business.

The ten topical standards are subdivided into three main categories. The **environmental standards** require disclosure of information on climate change (E1), pollution (E2), water and marine resources (E3), biodiversity and ecosystems (E4), and resource use and circular economy (E5). E1 on climate change is an exceptional standard, in the sense that a more stringent materiality assessment applies. If a company decides that climate change is not a material topic, it should disclose a detailed explanation of the materiality assessment’s conclusions, including a forward-looking analysis of how this topic could become material in the future.

According to the European Environment Agency, transport accounts for about a quarter of the EU’s total greenhouse gas (GHG) emissions, and causes air pollution, noise pollution and habitat fragmentation.^[14] It is also one of the sectors most reliant on fossil fuels. The environmental standards create more transparency these issues and about the efforts of transport companies to transition to cleaner energy sources. They incentivize companies to transition to green technologies, such as electric vehicles, sustainable aviation fuels, and alternative propulsion systems.

The next set of topical standards seeks to increase transparency on human rights and workers’

[14] European Environment Agency. (2024). *Transport and mobility*. <https://www.eea.europa.eu/en/topics/in-depth/transport-and-mobility?activeTab=07e50b68-8bf2-4641-ba6b-eda1afd544be>.



well-being. There are four **social standards**: own workforce (S1), workers in the value chain (S2), affected communities (S3), and consumers and end-users (S4). It can be argued that a company's workforce is always going to be material to the business and therefore all transport companies should be disclosing in line with S1 in their reporting.

Transport companies often operate in complex and global supply chains, characterized by risks such as labour exploitation, human rights abuses and unsustainable resource extraction. Moreover, transport operations can have significant impacts on communities, such as noise pollution, air pollution and displacement of local populations. The social standards urge companies to assess and disclose these impacts.

The third topical category on **governance** only consists of one standard, being business conduct (G1). Reporting under this standard pertains to topics such as corporate culture, business conduct policies, management of relationships with suppliers, bribery, political influence, and payment practices.

The governance standard is crucial for the transport sector because of its reliance on large-scale operations, global supply chains and extensive regulatory frameworks. For example, transport companies frequently engage in substantial contracts (e.g. aircraft purchases or port constructions), which can be prone to corruption. They also increasingly adopt digital technologies (e.g. fleet tracking, e-ticketing systems), raising concerns over data protection. Hence, the governance standard sets the foundation for ethical practices, accountability and strategic decision-making. It ensures transport companies uphold robust business ethics, avoid corruption, and contribute to a sustainable and fair economy.

Just like the cross-cutting standards, the topical standards are sector-agnostic. This means that they apply regardless of the sector to which the reporting company belongs. In acknowledgement of the diverse nature of industries, however, **sector-specific standards** are currently being developed. These standards would be tailored to address the unique sustainability aspects and reporting needs that are inherent to various sectors. **Road transport** is one of the sectors that will receive a particular set of standards. Other parts of the transport sector are not yet foreseen to be covered. The sector-specific standards are expected to be adopted by the European Commission in 2026.

Another set of standards that are still in the making are the **simplified standards for listed SMEs**. The CSRD recognizes that SMEs do not have the same capacity and resources for sustainability reporting as large companies. Hence, a specific set of ESRS will be developed that are proportionate and relevant to the characteristics of SMEs. They should be effective as from January 2026.

SECTOR-AGNOSTIC STANDARDS			
Cross-cutting standards		ESRS 1	General requirements
		ESRS 2	General disclosures
Topical standards	Environment	ESRS E1	Climate change
		ESRS E2	Pollution
		ESRS E3	Water and marine resources
		ESRS E4	Biodiversity and ecosystems
		ESRS E5	Circular economy
	Social	ESRS S1	Own workforce
		ESRS S2	Workers in the value chain
		ESRS S3	Affected communities
		ESRS S4	Consumers and end-users
	Governance	ESRS G1	Business conduct
	SECTOR-SPECIFIC STANDARDS		
	In draft – expected to be adopted in 2026		
SME PROPORTIONATE STANDARDS			
In draft – expected to be adopted in 2026			

When the company has drafted its sustainability report according to the guidelines set out above, the CSRD provides that it must be audited. This mandatory assurance procedure implies that an external auditor is tasked to review the quality and reliability of the sustainability report. In the Directive, a distinction is made between two levels of assurance. **Limited assurance** involves a lower level of scrutiny and must lead to the conclusion that “there is no reason to believe that the reporting is inaccurate.” **Reasonable assurance**, on the other hand, requires a more detailed and comprehensive examination of the disclosed information. The goal is to provide stakeholders with a high level of confidence that “the sustainability report contains no material misstatements”. For the first tier of companies, whose reports are due as from 2025, the CSRD only requires limited assurance. However, the European Commission is only set to adopt the limited assurance standards by 1 October 2026. Until then, the Directive clarifies that Member States can adopt their own standards or use existing national standards. Reasonable assurance standards are only set to be adopted by 1 October 2028.

2. The Corporate Sustainability Due Diligence Directive (CS3D)

a. Aim

On 25 July 2024, the long-awaited Corporate Sustainability Due Diligence Directive (CS3D)^[15] entered into force. This instrument represents a new step towards sustainable business within the framework of the European Green Deal.

As its name already indicates, the CS3D focuses exclusively on due diligence policies and procedures. It aims to harmonize due diligence standards for companies with significant activities in the EU, by introducing a set of minimum requirements. In-scope companies are expected to identify and address the adverse environmental and human rights impacts of their own operations as well those of their subsidiaries and business partners. As such, the Directive intends to foster sustainable and responsible corporate behaviour in companies' operations and across their global value chains.

b. Scope of application

Article 2 of the CS3D describes its scope of application. Both EU and non-EU companies are targeted by the Directive.

Category	Financial threshold	Employee threshold
EU companies = companies established under the laws of a Member State	Net worldwide turnover exceeding 450.000.000 euros in the last financial year	More than 1.000 employees
Non-EU companies = companies established under the laws of a third country	Net turnover exceeding 450.000.000 euros in the Union in the financial year preceding the last financial year	/

The scope also encompasses companies with franchising or licensing agreements in the EU. These companies or their ultimate parent company should have a worldwide (for EU companies) or EU (for non-EU companies) turnover exceeding 80.000.000 euros, provided that at least 22.500.000 euros were generated by royalties.

In addition to the categories identified above, the CS3D applies to ultimate parent companies of (non-)EU groups that meet the thresholds on a consolidated basis.

[15] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

c. Implementation

In order to allow in-scope companies to adapt to the new requirements, the CS3D provides for a phased entry into force. The obligations of the Directive will be implemented gradually, targeting the largest companies first.

The implementation timeline can be summarized as follows.

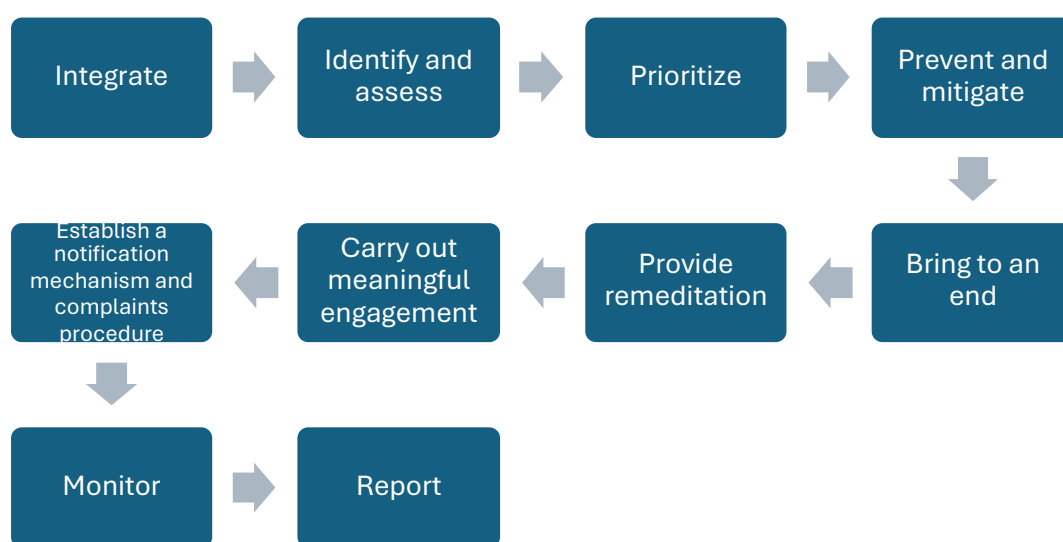
Category	Financial threshold	Employee threshold	Implementation date
EU companies (including ultimate parent companies)	Net worldwide turnover exceeding 1.500.000.000 euros in the last financial year	More than 5.000 employees	26 July 2027
	Net worldwide turnover exceeding 900.000.000 euros in the last financial year	More than 3.000 employees	26 July 2028
	Net worldwide turnover exceeding 450.000.000 euros in the last financial year	More than 1.000 employees	26 July 2029
Non-EU companies (including ultimate parent companies)	Net turnover exceeding 1.500.000.000 euros in the Union in the financial year preceding the last financial year	/	26 July 2027
	Net turnover exceeding 900.000.000 euros in the Union in the financial year preceding the last financial year	/	26 July 2028
	Net turnover exceeding 450.000.000 euros in the Union in the financial year preceding the last financial year	/	26 July 2029
Franchisors and licensors (including ultimate parent companies)	Net turnover exceeding 80.000.000 euros (worldwide or in the Union), provided that at least 22.500.000 euros were generated by royalties	/	26 July 2029

d. Obligations

At the heart of the CS3D lies the obligation for in-scope companies to conduct due diligence. According to Article 1 (1) (a) of the CS3D, companies are expected to take steps for managing the **actual and potential adverse impacts of their activities on human rights and environmental matters**, arising from their own operations, those of their subsidiaries, and those of their business partners in their chain of activities. The latter concept covers both activities of the company's **upstream business partners** related to the production of goods or the provision of services by that company, and activities of the company's **downstream business partners** related to the distribution, transport and storage of a product of that company, where the business partners carry out those activities for the company or on behalf of the company.

The CS3D further specifies how companies can comply with this general requirement.

- **Article 7:** Companies must **integrate** due diligence into all their relevant policies and risk management systems and have in place a due diligence policy that ensures risk-based due diligence.
- **Article 8:** Companies must take appropriate measures to **identify and assess** actual and potential adverse impacts arising from their own operations or those of their subsidiaries and, where related to their chains of activities, those of their business partners.
- **Article 9:** Where it is not feasible to prevent, mitigate, bring to an end or minimize all identified adverse impacts at the same time and to their full extent, companies must **prioritize** the adverse impacts identified.
- **Article 10:** Companies must take appropriate measures to **prevent**, or where prevention is not possible or not immediately possible, adequately **mitigate**, potential adverse impacts that have been, or should have been, identified.
- **Article 11:** Companies must take appropriate measures to **bring to an end** actual adverse impacts that have been, or should have been, identified.
- **Article 12:** Where a company has caused or jointly caused an actual adverse impact, the company must **provide remediation**.
- **Article 13:** Companies must take appropriate measures to **carry out effective engagement** with stakeholders.
- **Article 14:** Companies must enable persons and entities to submit **complaints** to them where they have legitimate concerns regarding actual or potential adverse impacts. Companies must establish an accessible mechanism for the submission of **notifications** by persons and entities where they have information or concerns regarding actual or potential adverse impacts.
- **Article 15:** Companies must carry out periodic assessments of their own operations and measures, those of their subsidiaries and, where related to the chain of activities of the company, those of their business partners, to assess the implementation and to **monitor** the adequacy and effectiveness of the identification, prevention, mitigation, bringing to an end and minimization of the extent of adverse impacts.
- **Article 16:** Companies must **report** on the matters covered by the Directive by publishing on their website an annual statement.



Another spearhead of the CS3D is the obligation for in-scope companies to adopt and put into effect a **transition plan for climate change mitigation** (Article 22). This plan is meant to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5°C in line with the Paris Agreement as well as the objective of achieving climate neutrality. Companies are required to update their transition plan every year.

Each Member State must designate one or more supervisory authorities, that may carry out investigations and require the company to provide information on their compliance with the obligations set out in Articles 7-12. These supervisory authorities also supervise the adoption and design (but not the implementation) of the transition plan in accordance with Article 22 of the CS3D.

In case of non-compliance by means of a certain conduct or omission, the supervisory authorities may order the company to cease its infringements, to refrain from any repetition of the relevant conduct, or to provide remediation proportionate to the infringement and necessary to bring it to an end. They may also impose effective, proportionate and dissuasive penalties, with a maximum penalty of at least 5% of the company's net worldwide turnover in the previous financial year. In the event of an imminent risk of severe and irreparable harm, the supervisory bodies can decide to adopt interim measures.

Lastly, the CS3D provides that companies should be held liable under national law for damage caused to natural or legal persons. The claimant is then entitled to full compensation. It is important to note that Member States may determine the conditions under which trade unions, civil society organizations and national human rights institutions can bring collective redress mechanisms on behalf of victims. However, companies can only be held liable where they intentionally or negligently fail to comply with the obligations of Articles 10 and 11, if the relevant rights, prohibitions or obligations are aimed at protecting the natural or legal person in question, and if the failure to comply caused damage to that person. In any case, companies cannot be held liable if the damage was caused only by their business partners in their chain of activities.

3. Interaction between both instruments

It may be clear that both the CSRD and the CS3D are ultimately seeking to make companies more responsible for their impact on people and the planet. While they focus on different areas, they complement each other to create a comprehensive framework for sustainable business practices.

The CS3D encourages companies to ensure that their business is sustainable and holds them accountable when they fail to comply. This Directive is **action**-oriented, describing the efforts that companies must take to address their (potentially) harmful impacts. The CSRD, on the other hand, focuses on **transparency**. It requires companies to report on their sustainability efforts, hence informing stakeholders about the actions that have been taken. As such, the CSRD can be seen to measure the effectiveness of efforts that have been made under CS3D. By disclosing detailed data on their sustainability practices, companies allow their stakeholders to evaluate whether the CS3D goals have been met.

Both Directives can be seen as mutually reinforcing. On the one hand, actions taken under the CS3D become part of the reporting obligations under the CSRD. On the other hand, the CSRD strengthens CS3D compliance, by obliging companies to not only make sustainability efforts but to also show them.

As such, the interplay of the two Directives makes it hard for companies to make empty promises. Even more so, if companies fail to act or if they fail to disclose their actions, they can be held accountable. This dynamic creates pressure on companies to continually improve their sustainability practices rather than treating them as one-off efforts. In addition, the European Union's Sustainable Finance Disclosure Regulation (SFDR) has already set requirements for investors. This means that investors will be looking at the information that companies disclose under the CSRD to assess if they are meeting sustainability practices required by CS3D.

Although there is some overlap, the CS3D and CSRD do not have an identical scope of application. It has been mentioned above that the CSRD has a broad scope of application, targeting more than 50.000 companies worldwide. As the CS3D is designed to tackle the most significant risks in the largest companies, its scope of application is significantly narrower. Logically, the effect described above only applies to those companies that fall within the scope of both Directives.



HUMAN RIGHTS DUE DILIGENCE IN PRACTICE



1. What is the role of trade unions and workers' representatives?

Trade unions and workers' representatives have the possibility to act at several levels in relation to their ability to influence legislative decision-making processes as well as company-level policies and practices.

HRDD offers an excellent opportunity as it can promote dialogue between trade union organisations and workers' representatives on the one hand, and company management on the other, including in the supply chain. At the same time, it is important to beware of attempts by some companies to circumvent collective bargaining and information-consultation obligations under the guise of dialogue with non-union organisations, or stakeholders whose actual representativeness may be questionable.

a. Trade union organisations can influence the adoption of national legislation

- **The European Union Directive on Corporate Sustainability Reporting (CSRD) 2022/2464 of 14 December 2022**

This Directive should have been transposed already in all EU member states national legislations since 6 July 2024. However, as of September 2024, 14 EU Member states had not yet complied with their obligations: Austria, Belgium, Cyprus, Czechia (partly), Estonia, Germany, Greece, Luxembourg, Malta, Poland, The Netherlands, Portugal, Slovenia and Spain. ETF affiliates can therefore still influence the legislative process to secure that the best options are chosen in the interest of workers. Detailed explanations were drafted by the European Trade Union Confederation (ETUC) in a recommendation's booklet.

Here some examples of questions to be addressed in the legislative process:

- » How should the information – consultation be carried out? Level of representation: works council or European works council or both? What timing?
- » What are the topics and indicators? Are they detailed enough? One critical issue on information is access to country-by-country data. Sometimes, management hides realities by grouping several countries information into one sub-region business unit.
- » What are the means of workers' representatives to analyse complex data and reports that may be of several hundreds of pages? Can they be supported by an expert of their choice?
- » What happens if management does not inform and consult the workers' representatives or trade unions? What are the penalties?

- **The Corporate Sustainability Due Diligence Directive (CS3D) 2024/1760 of 13 June 2024**

This Directive will be transposed into all EU member states. The European trade union movement is currently finalizing a list of recommendations for national affiliates. Here is a list of preliminary suggestions to influence the legislative process:

1. **Definition of "stakeholders"**: make sure that the new draft national legislation sticks to the EU Directive one because it includes workers, their representatives and trade unions of the company, its subsidiaries and business partners.
2. **Due diligence design**: check that the new draft national legislation involves workers' representatives and trade unions in the shaping of corporate due diligence policies (including prior information-consultation rights as a minimum).
3. **Monitoring update**: check that the legislation obliges employers to carry out periodic assessments of risks related to its operations and supply chain (every 12 months at least) or when a significant change happens (like a new major business partnership).
4. **Collective bargaining**: the EU Directive does not undermine collective bargaining rights in your country as well as freedom of association. Check that the new draft national legislation is on the same line (see recital 39 of the Directive on this important point).
5. **Information - consultation - participation**: works councils and European Works Councils should benefit from new prerogatives thanks to the CS3D. This should be clarified in the national legislation.
6. **Civil liability**: make sure that trade unions can defend not only their interests but the ones of the workers they represent, including in courts.
7. **No regression clause**: when a violation has taken place, the new legislation should not endanger existing rules regarding joint and several liability of companies, business partners and subsidiaries.
8. **Public procurement**: ask your legislator to impose the respect of due diligence obligations as a criterion for public and concession contracts, including violations of social and labour laws and collective agreements. This is regrettably just an option in the CS3D!
9. **A supervisory public authority**: check that the draft legislation grants the right to trade unions to raise concerns with this authority and keeps them informed of the procedures and decisions in a transparent way. The appointed body should have the necessary means to enforce its decisions, including penalties.

b. workers' representatives and trade unions can influence corporate HRDD policies and practices

At company level, workers' representatives and trade unions can act in several ways that complement each other after the Directives' transposition into national legislation:

As "stakeholders", workers' representatives and trade unions must be consulted on:	Workers' representatives and trade unionists:	In practice, trade union representatives can already today:
The identification of human rights (including fundamental workers' rights) risks related to the company and its business partners operations. The outcome will define the scope of the HRDD policy in the company.	Can request non-financial data (social, environmental, governance) when they are members of the works councils, health and safety committees and European Works Councils.	Negotiate a collective agreement to set up a grievance mechanism.
The adoption of qualitative and quantitative monitoring indicators on social, environmental and governance issues.	Must be informed and consulted on the content of the HRDD policy, and its long-term approach.	Negotiate a Global Framework Agreement (GFA) to set up the HRDD policy and practices in the whole multinational company.
The development of preventive and corrective action plans in case of risk or actual violations.	Must be informed and consulted on the Code of Conduct that will apply to all companies into the group as well as to all business partners. The Code includes principles and rules to be followed on HRDD.	According to each country's legislation, they may take legal action against the company in case of non-compliance in relation to lack of transparency and in some countries like France and Germany for not applying the HRDD legislation already in force.
The termination and suspension of a business relationship as a possible solution for remediation.	Must be informed and consulted on the process to implement the Code of Conduct and measures to verify the effectiveness of the policy and Code.	
The remediation of violations.	According to each country's legislation, they may take legal action against the company in case of non-compliance.	

2. Case-studies

a. Organising workers in the supply chain: an example of successful union involvement in Panama

With international union support, a logistics and transport union in Panama was able to recruit new members and establish itself as a legitimate social partner with management. A collective agreement was signed shortly afterwards, and health and safety committees were set up in several workplaces. The information provided by management to these committees enabled the union leaders to draw up a map of the activities of the main subcontractors. The union was then able to organise the subcontractors' workers and set up a new union. This strategy was so successful that the unions in the sector eventually formed a national confederation.

There were several lessons learned from this case:

- The combination of international solidarity in organising new members and negotiating a collective agreement led to the establishment of health and safety committees. These committees are essential for accessing information about the structure and ramifications of the subcontracting chain, both upstream and downstream.
- Human rights due diligence is not and should not be a substitute for collective bargaining. It facilitates access to information and positions workers' representatives and trade unions in the fundamental discussions on the rules that apply to business partners in the company's supply chain, such as subcontractors. These health and safety committees could request non-financial information on the profile and selection criteria of subcontractors/suppliers and analyse the risks associated with their activities (forced labour, trade union discrimination, excessive overtime, undeclared work, etc.).

b. The risk assessment of supply chain transport activities by a client company: the case of Amazon

As one of the world's largest global retail, web services and media providers, with approximately 1.5 million full-time and part-time employees, it is helpful to examine the implications of the CSRD and the CSDDD for Amazon. The group is head-quartered in Seattle in the US but because of its substantial footprint in the European Union, its activities – including transport, logistics and warehousing – will still come under the requirements of the EU corporate disclosure and due diligence directives.

According to trade unions, newspapers and documentaries on Amazon, several issues can be reported as major concerns in the Amazon transport and logistic supply chain: unrealistic delivery expectations,^[16] sometimes leading to unsafe driving and missed breaks; lack of safety measures, including a lack of proper training and safety protocols, resulting in a high rate of injuries and accidents; and exploitation of independent contractors who do not have access to basic benefits such as health insurance, paid sick leave or workers' compensation. Lack of access to basic benefits can lead to problems with decent pay.^[17] High turnover and job instability are other concerns raised by drivers.

[16] "Last-mile liability and the reputational harm shippers face", Brian Straight, November 2021, <https://www.freight-waves.com/news/last-mile-liability-and-the-reputational-harm-shippers-risk>.

[17] Building Its Own Delivery Network, Amazon Puts the Squeeze On Drivers, December 17, 2020, Jake Alimahomed-Wilson, <https://labornotes.org/2020/12/building-its-own-delivery-network-amazon-puts-squeeze-drivers>.

In this context, it is interesting to note that Amazon has identified the following areas as “our salient human rights risks”:

- Diversity, equity & inclusion
- Safe & healthy working conditions
- Modern slavery & forced labour
- Fair wages & hours
- Freedom of association
- Future of work
- Right to privacy
- Product safety & security
- Social, economic & environmental justice

Regrettably, in terms of its current sustainability disclosures, Amazon does not report including trade union representatives in the consultation process to identify key human rights risks and promote “effective solutions that improve working conditions for people throughout [its] supply chain”. This despite the fact that freedom of association is identified as one of Amazon’s salient human rights risks.^[18] Instead, its Sustainability report lists several NGOs as stakeholders (some of these NGOs are actually industry associations), none of which specialises in labour issues from a workers’ perspective.^[19] This will need to change under the CSRD, for example, under ESRS S1 Disclosure Requirement S1-8 – Collective bargaining coverage and social dialogue (“The undertaking shall disclose information on the extent to which the working conditions and terms of employment of its employees are determined or influenced by collective bargaining agreements and on the extent to which its employees are represented in social dialogue in the European Economic Area (EEA) at the establishment and European level.”).

Given that the majority of Amazon’s salient human rights risks relate to workers’ rights it is clear that unions have an important role to play in both monitoring the company’s actual performance in relation to supply chain human rights due diligence and in negotiating collective agreements which will lead to lasting improvements in the risk areas for human rights abuses identified above.

From its 2023 Sustainable Development Report, it is not possible to determine whether transport and logistics workers raise grievances, what their profile is and what remediations have been adopted. The examples given refer to investigations in the industrial, agricultural and mining sectors sold by Amazon, not transport.

Where Amazon’s direct employees are concerned, the company has set up a remediation process based on an online platform, an employee survey and discussion forums, without the involvement of union representatives.

[18] <https://sustainability.aboutamazon.com/human-rights#salient-risks>.

[19] See for example Amazon 2023 Sustainability Report, p. 49 available at: <https://sustainability.aboutamazon.com/2023-amazon-sustainability-report.pdf>.

There are several lessons to be learned from this case:

- Public corporate reporting is a useful tool to provide an overview of human rights due diligence policies and processes, but it is often not precise enough. More quantitative and qualitative data is needed (including sector and country specific data).
- Workers at Amazon and in the supply chain are not adequately informed and consulted in the assessment of risks associated with Amazon's operations and its transport business partners. However, new national legislation and EU directives will make this involvement mandatory.
- Where union representatives are present, health and safety committees and the newly created Amazon European Works Council are important tools for analysing and influencing management's human due diligence policies and processes and most importantly monitoring on whether they are being implemented in practice.

c. A.P. Moeller – Maersk: using increased requirements on corporate reporting to put the focus on labour rights in supply chains

As one of the largest global shipping companies with increasing investment in port terminals and logistics, A.P. Moeller-Maersk's environmental, social and governance policies impact on many thousands of workers within global supply chains and all regions of our planet.

The International Transport Workers' Federation (ITF) engages with the Maersk group on a range of issues which are priorities for seafarers, dockers and road haulage and warehouse workers. Maersk has made welcome public commitments on net zero, respect for human rights and labour rights and achieving a just transition as part of its corporate strategy outlined to shareholders. The key question is how these commitments translate into practice around the globe – many countries do not have as strong social dialogue between management and unions as Denmark where the Maersk is headquartered. ITF's network of affiliate unions has identified areas of risk where improvement is needed to deliver on existing environmental, social, and corporate governance (ESG) commitments made by the Maersk group. In particular, the senior leadership must demonstrate that its constructive approach to employee relations applies to all parts of the group, including subsidiaries and contractors, across all regions.

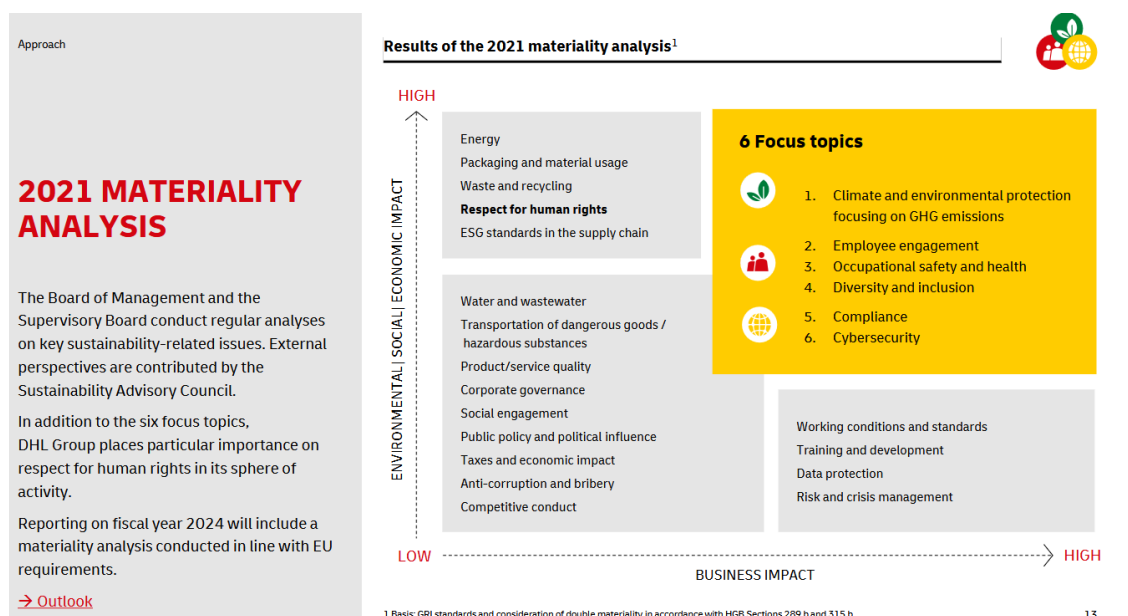
After hearing from the trade unions, in 2024 pension funds Akademiker Pension and LD Fonde filed a shareholder resolution which called on Maersk to provide more detail to investors on its performance on human rights due diligence. Although the resolution was not adopted by the Board, it focussed attention at the Annual General Meeting on what the Group was doing to respect human rights, including labour rights, in its operations and its supply chain and how it identified and prevented potential abuses.^[20] This resolution builds on the new EU regulation and shows clearly that some investors are interested in getting an accurate picture of human rights including labour in global supply chains and can be helpful allies for trade unions.

[20] <https://akademikerpension.dk/media/l21kdqef/maersk-agm-statements.pdf>.

d. DHL Group: unions can raise workers' priorities and supply chain labour rights risks

One of the challenges that unions face is getting the issues that their members are most concerned about recognised and taken seriously by management. The Corporate Sustainability Reporting Directive (CSRD) and the European Sustainability Reporting Standards (ESRS) provide new opportunities that unions can exploit to highlight the key concerns of their members and ensure that the company reports publicly about what it is doing or not doing to address them.

Under the double materiality approach of the European Union, a company has to identify which issues it has a material impact on - a materiality analysis - and then disclose against the relevant ESRS criteria in its annual reporting. From 2025 if companies identify their workforce and workers in the value chain as material to the business, they have to report publicly in depth on these aspects of their business using ESRS S1 (Own workforce) and ESRS S2 (Workers in the value chain). Trade unions can take a pro-active approach here to make sure that companies are aware of workforce and supply chain risks and impacts that should be considered as material by the company. For instance, the International Transport Workers' Federation (ITF) has a global relationship with DHL Group set out by the OECD Protocol. In meetings with the DHL Group, ITF was able to highlight that the risk analysis conducted by the company should include rights of workers in the supply chain, wages and working hours and health and safety (see the summary of the Group's analysis below.) It clearly shows that the ITF and national unions can play a very helpful role as stakeholders in ensuring that human rights and due diligence policies are translated into effective practices both for DHL's own workforce and workers in the global value chain. The next steps are to ensure that respect for human rights, employee engagement, occupational safety and health and inclusion, are reflected in robust Key Performance Indicators (KPIs) for DHL Group to report its performance against in 2025.



Source: DHL Group 2023 Sustainability available at: <https://group.dhl.com/en/sustainability/sustainability-roadmap/sustainability-reports.html>

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